

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 221, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, line 3, after "of" insert "**IC 13-11-2-191 and**".
- 2 Page 2, between lines 15 and 16, begin a new paragraph and insert:
- 3 "SECTION 2. IC 13-11-2-40 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 40. "Confined feeding
- 5 operation", for purposes of IC 13-18-10, means:
- 6 (1) any confined feeding of:
- 7 (A) at least three hundred (300) cattle;
- 8 (B) at least six hundred (600) swine or sheep; ~~and~~
- 9 (C) at least thirty thousand (30,000) fowl; **and**
- 10 **(D) at least five hundred (500) horses.**
- 11 (2) any animal feeding operation electing to be subject to
- 12 IC 13-18-10; or
- 13 (3) any animal feeding operation that is causing a violation of:
- 14 (A) water pollution control laws;
- 15 (B) any rules of the water pollution control board; or
- 16 (C) IC 13-18-10.
- 17 A determination by the department under this subdivision is appealable
- 18 under IC 4-21.5."
- 19 Page 2, line 40, delete "the individual" and insert "**any of the**
- 20 **following:**
- 21 **(1) An applicant.**

(2) An officer, a corporation director, or a senior management official of any of the following that is an applicant:

(A) A corporation.

(B) A partnership.

(C) A limited liability company.

(D) A business association."

Page 2, delete lines 41 through 42.

Page 3, delete line 1.

Page 3, delete lines 32 through 42, begin a new paragraph and insert:

"SECTION 5. IC 13-18-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. ~~(a)~~ A person may not start:

(1) construction of a confined feeding operation; or

(2) expansion of a confined feeding operation that increases animal capacity or manure containment capacity, or both;

without obtaining the prior approval of the department.

~~(b) Obtaining an NPDES permit for a CAFO meets the requirements of subsection (a) and 327 IAC 16 to obtain an approval.~~

SECTION 6. IC 13-18-10-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1.5. **(a) Subject to subsection (b), an application for approval under section 1 of this chapter must include for each responsible party the disclosure statement referred to in subsection (c) if either or both of the following apply:**

(1) State or federal officials at any time alleged that the responsible party committed acts or omissions that constituted a material violation of state or federal environmental law.

(2) Foreign officials at any time alleged that the responsible party committed acts or omissions that:

(A) constituted a material violation of foreign environmental law; and

(B) would have constituted a material violation of state or federal environmental law if the act or omission had occurred in the United States.

(b) Subsection (a):

(1) applies only if the acts or omissions alleged under subsection (a)(1) or (a)(2) presented a substantial endangerment to human health or the environment; and

(2) does not apply to a renewal of an approval under section 1 of this chapter that does not involve construction or

1 expansion as described in section 1 of this chapter.

2 (c) A responsible party referred to in subsection (a) must make
3 reasonable efforts to provide complete and accurate information
4 to the department in a disclosure statement that includes the
5 following:

6 (1) The name and business address of the responsible party.

7 (2) A description of the responsible party's experience in
8 managing the environmental aspects of the type of facility
9 that will be managed under the permit.

10 (3) A description of all pending administrative, civil, or
11 criminal enforcement actions filed in the United States against
12 the responsible party alleging any acts or omissions that:

13 (A) constitute a material violation of state or federal
14 environmental law; and

15 (B) present a substantial endangerment to human health or
16 the environment.

17 (4) A description of all pending administrative, civil, or
18 criminal enforcement actions filed in a foreign country
19 against the responsible party alleging any acts or omissions
20 that:

21 (A) constitute a material violation of foreign
22 environmental law;

23 (B) would have constituted a material violation of state or
24 federal environmental law if the act or omission on which
25 the action is based had occurred in the United States; and

26 (C) present a substantial endangerment to human health
27 or the environment.

28 (5) A description of all finally adjudicated or settled
29 administrative, civil, or criminal enforcement actions in the
30 United States resolved against the responsible party within
31 the five (5) years that immediately precede the date of the
32 application involving acts or omissions that:

33 (A) constitute a material violation of federal or state
34 environmental law; and

35 (B) present a substantial endangerment to human health or
36 the environment.

37 (6) A description of all finally adjudicated or settled
38 administrative, civil, or criminal enforcement actions in a
39 foreign country resolved against the responsible party within
40 the five (5) years that immediately precede the date of the
41 application involving acts or omissions that:

42 (A) constitute a material violation of foreign

1 **environmental law;**
 2 **(B) would have constituted a material violation of state or**
 3 **federal environmental law if the act or omission on which**
 4 **the action is based had occurred in the United States; and**
 5 **(C) present a substantial endangerment to human health**
 6 **or the environment.**

7 **(7) Identification of all state, federal, or foreign**
 8 **environmental permits:**

9 **(A) applied for by the responsible party that were denied;**
 10 **or**

11 **(B) previously held by the responsible party that were**
 12 **revoked.**

13 **(d) A disclosure statement submitted under subsection (c):**

14 **(1) must be executed under oath or affirmation; and**

15 **(2) is subject to the penalty for perjury under IC 35-44-2-1.**

16 **(e) The department may investigate and verify the information**
 17 **set forth in a disclosure statement submitted under this section.**

18 SECTION 7. IC 13-18-10-2 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Application for
 20 approval **under section 1 of this chapter** of the construction **or**
 21 **expansion** of a confined feeding operation must be made on a form
 22 provided by the department. An applicant must submit the completed
 23 application form to the department together with the following:

24 (1) Plans and specifications for the design and operation of
 25 manure treatment and control facilities.

26 (2) A manure management plan that outlines procedures for the
 27 following:

28 (A) Soil testing.

29 (B) Manure testing.

30 (3) Maps of manure application areas.

31 (4) Supplemental information that the department requires,
 32 including the following:

33 (A) General features of topography.

34 (B) Soil types.

35 (C) Drainage course.

36 (D) Identification of nearest streams, ditches, and lakes.

37 (E) Location of field tiles.

38 (F) Location of land application areas.

39 (G) Location of manure treatment facilities.

40 (H) Farmstead plan, including the location of water wells on
 41 the site.

42 (5) A fee of one hundred dollars (\$100). The department shall

refund the fee if the department does not make a determination in accordance with the time period established under section 2.1 of this chapter.

(b) An applicant who applies for approval **under section 1 of this chapter** to construct **or expand** a confined feeding operation on land that is undeveloped or for which a valid existing approval has not been issued shall make a reasonable effort to provide notice:

(1) to:

(A) each person who owns land that adjoins the land on which the confined feeding operation is to be located **or expanded**;
or

(B) if a person who owns land that adjoins the land on which the confined feeding operation is to be located **or expanded** does not occupy the land, all occupants of the land; and

(2) to the county executive of the county in which the confined feeding operation is to be located **or expanded**;

not more than ten (10) working days after submitting an application. The notice must be sent by mail, be in writing, include the date on which the application was submitted to the department, and include a brief description of the subject of the application. The applicant shall pay the cost of complying with this subsection. The applicant shall submit an affidavit to the department that certifies that the applicant has complied with this subsection.

(c) Plans and specifications for manure treatment or control facilities for a confined feeding operation must secure the approval of the department. The department shall approve the construction **or expansion** and the operation of the manure management system of the confined feeding operation if the commissioner determines that the applicant meets the requirements of:

(1) this chapter;

(2) rules adopted under this chapter;

(3) the water pollution control laws;

(4) rules adopted under the water pollution control laws; and

(5) policies and statements adopted under IC 13-14-1-11.5 relative to confined feeding operations.

SECTION 8. IC 13-18-10-2.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2.1. (a) The department:

(1) shall make a determination on an application **made under section 2 of this chapter** not later than ninety (90) days after the date the department receives the completed application, including all required supplemental information, unless the department and

the applicant agree to a longer time; and

(2) may conduct any inquiry or investigation, consistent with the department's duties under this chapter, the department considers necessary before making a determination.

(b) If the department fails to make a determination on an application not later than ninety (90) days after the date the department receives the completed application, the applicant may request and receive a refund of an approval application fee paid by the applicant, and the commissioner shall:

(1) continue to review the application;

(2) approve or deny the application as soon as practicable; and

(3) refund the applicant's application fee not later than twenty-five (25) working days after the receipt of the applicant's request.

(c) The commissioner may suspend the processing of an application and the ninety (90) day period described under this section if the department determines within thirty (30) days after the department receives the application that the application is incomplete and has mailed a notice of deficiency to the applicant that specifies the parts of the application that:

(1) do not contain adequate information for the department to process the application; or

(2) are not consistent with applicable law.

(d) The department may establish requirements in an approval regarding that part of the confined feeding operation that concerns manure handling and application to assure compliance with:

(1) this chapter;

(2) rules adopted under this chapter;

(3) the water pollution control laws;

(4) rules adopted under the water pollution control laws; and

(5) policies and statements adopted under IC 13-14-1-11.5 relative to confined feeding operations.

(e) Subject to subsection (f), the commissioner may deny an application upon making either or both of the following findings:

(1) A responsible party intentionally misrepresented or concealed any material fact in either or both of the following:

(A) An application for approval under section 1 of this chapter.

(B) A disclosure statement required by section 1.5 of this chapter.

(2) An enforcement action was resolved against a responsible party as described in either or both of the following:

(A) Section 1.5(c)(5) of this chapter.

1 **(B) Section 1.5(c)(6) of this chapter.**

2 **(f) Before making a determination to approve or deny an**
 3 **application, the commissioner must consider the following factors:**

4 **(1) The nature and details of the acts attributed to the**
 5 **responsible party.**

6 **(2) The degree of culpability of the responsible party.**

7 **(3) The responsible party's cooperation with the state, federal,**
 8 **or foreign agencies involved in the investigation of the**
 9 **activities involved in actions referred to in section 1.5(c)(5)**
 10 **and 1.5(c)(6) of this chapter.**

11 **(4) The responsible party's dissociation from any other**
 12 **persons or entities convicted in a criminal enforcement action**
 13 **referred to in section 1.5(c)(5) and 1.5(c)(6) of this chapter.**

14 **(5) Prior or subsequent self-policing or internal education**
 15 **programs established by the responsible party to prevent acts,**
 16 **omissions, or violations referred to in section 1.5(c)(5) and**
 17 **1.5(c)(6) of this chapter.**

18 **(g) Except as provided in subsection (h), in taking action under**
 19 **subsection (e), the commissioner must make separately stated**
 20 **findings of fact to support the action taken. The findings of fact**
 21 **must:**

22 **(1) include a statement of ultimate fact; and**

23 **(2) be accompanied by a concise statement of the underlying**
 24 **basic facts of record to support the findings.**

25 **(h) If the commissioner denies an application under subsection**
 26 **(e), the commissioner is not required to explain the extent to which**
 27 **any of the factors set forth in subsection (f) influenced the denial.**

28 ~~(e)~~ **(i) The department may amend an approval under section 1 of**
 29 **this chapter or revoke an approval under section 1 of this chapter:**

30 **(1) for failure to comply with:**

31 **(A) this chapter;**

32 **(B) rules adopted under this chapter;**

33 **(C) the water pollution control laws; or**

34 **(D) rules adopted under the water pollution control laws; and**
 35 **(2) as needed to prevent discharges of manure into the**
 36 **environment that pollute or threaten to pollute the waters of the**
 37 **state.**

38 **SECTION 9. IC 13-18-10-2.2 IS AMENDED TO READ AS**
 39 **FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2.2. (a) If an applicant**
 40 **receives an approval under this chapter and completes construction or**
 41 **expansion, not more than thirty (30) days after the date the applicant**
 42 **completes the construction or expansion the applicant shall execute**

and send to the department an affidavit that affirms under penalties of perjury that the confined feeding operation:

(1) was constructed **or expanded**; and

(2) will be operated;

in accordance with the requirements of the department's approval.

(b) Construction **or expansion** of an approved confined feeding operation must:

(1) begin not later than two (2) years; and

(2) be completed not later than four (4) years;

after the date the department approves the construction **or expansion** of the confined feeding operation or the date all appeals brought under IC 4-21.5 concerning the construction **or expansion** of the confined feeding operation have been completed, whichever is later."

Delete pages 4 through 9.

Page 10, delete lines 1 through 31.

Page 10, line 38, after "construction" insert ", **expansion**".

Page 10, line 38, after "operations" delete "and".

Page 10, line 39, delete "CAFOs".

Page 10, line 40, after "construction" insert ", **expansion**".

Page 13, delete lines 14 through 42, begin a new paragraph and insert:

"SECTION 14. [EFFECTIVE UPON PASSAGE] (a) **This SECTION applies notwithstanding the effective date of:**

(1) IC 13-18-10-1.5, as added by this act; and

(2) the amendments under this act to IC 13-11-2-8, IC 13-11-2-40, IC 13-11-2-191, IC 13-18-10-1, IC 13-18-10-2, IC 13-18-10-2.1, and IC 13-18-10-2.2.

(b) The definitions in IC 13-11-2 apply throughout this SECTION.

(c) Subject to subsection (d), the Indiana Code sections referred to in subsection (a), as added or amended by this act, apply to a confined feeding operation for which a person is required to submit an application to the department for approval under IC 13-18-10-1, as amended by this act, in the same manner those sections would have applied if those sections had been in effect on the date the application was submitted to the department.

(d) Subsection (c) applies only if an application referred to in subsection (c) was not approved by the department before the

- 1 **effective date of this SECTION."**
- 2 Page 14, delete lines 1 through 3.
- 3 Renumber all SECTIONS consecutively.
(Reference is to SB 221 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 8, Nays 0.

Senator Gard, Chairperson